

July 9, 2010

Reports Liaison Officer
Office of Policy Development and Research
Department of Housing and Urban Development
451 7th Street, SW, Room 8226
Washington, DC 20410

Re: Docket No. FR-5382-N-11, Notice of Proposed Information Collection for Public Comment: Study of the Low Income Housing Tax Credit (LIHTC) Program After 15 Years

Dear Reports Liaison Officer:

Thank you for the opportunity to comment on HUD's Proposed Information Collection on the Low Income Housing Tax Credit (LIHTC) Program. We encourage HUD to be ambitious and seize this opportunity to bring the LIHTC program into compliance with the obligation to affirmatively further fair housing.¹ In responding to HUD's May 11, 2010, notice, we will highlight ways in which HUD can investigate fair housing compliance through this collection of information with minimal burden on survey participants.

First, we recommend that HUD collect data on the race and family structure of occupants of LIHTC properties, as well as persons on property waitlists. HUD should also collect information on admissions criteria and tenant selection processes, including any residency preferences, lottery mechanisms, or first-come, first-serve policies. This type of research could indicate if LIHTC properties are racially segregated across metropolitan regions, and could illuminate the likely mechanisms for such disparities. This type of data is already collected by property owners so including it in HUD's survey would not impose any burden on survey participants.

Second, HUD should collect data about how many units are occupied by Section 8 voucher holders, another type of data that owners already collect. While the LIHTC Program is geared toward creating mixed-income housing, the use of flat rents instead of percent-of-income rents can exclude many families who have incomes below the poverty line.² However, these extremely low-income families can rent units in LIHTC properties

¹ The duty to "affirmatively to further" fair housing under the Fair Housing Act applies directly to the Department of Treasury, to HUD, to all state HFAs that administer the LIHTC program, and to all owners and managers of tax credit properties. *See* 42 U.S.C. § 3608(d). HUD, the Department of Treasury, LIHTC owners and state housing finance agencies (HFAs) are also covered by Title VI of the Civil Rights Act of 1964, and its implementing regulations, which forbid discrimination and segregation based on race, color or national origin, either by intent or as a result of a seemingly neutral policy or practice. HUD's Title VI regulations, like the Fair Housing Act, obligate HFAs and tax credit owners to administer their programs affirmatively to overcome conditions of discrimination and to take other steps to accomplish the purposes of Title VI. The Department and state HFAs are required to closely monitor tax credit properties for discriminatory practices. *See id.*; *see also* Executive Order 12892 (Jan. 17, 1994). The duty to affirmatively further fair housing is also delegated to state HFAs and owners by I.R.S. regulation 26 C.F.R. § 1.42-9, which incorporates HUD non-discrimination and site selection rules.

² *See* Jill Khadduri & Charles Wilkins, *Designing Subsidized Rental Housing Programs: What Have We Learned?*, RR07-5, Joint Center for Housing Studies, Harvard University, 25 (2007) (discussing the LIHTC

by using Section 8 vouchers.³ Collecting information about how many voucher holders are served by LIHTC properties may help HUD understand how successfully the LIHTC Program has been at reaching families with extremely low incomes and promoting a wide range of economic integration, and may also help HUD identify illegal discrimination against voucher holders.

Third, we recommend that HUD collect affirmative fair housing marketing plans from all property owners surveyed. In doing so, HUD would not be imposing any significant burden on property owners because they are likely already required to create and carry out such plans pursuant to 24 C.F.R. § 200.620 (which applies to all participants in FHA subsidized and unsubsidized housing programs) or state law. Collection of these marketing plans could provide HUD with important information about how property owners publicize available rental units to eligible tenants, regardless of race, color, religion, sex, handicap or familial status or national origin, beyond the mere self-certification of compliance by property owners required under 24 C.F.R. § 200.625. In combination with analysis of racial occupancy data, information on affirmative marketing plans could indicate projects in need of improvement. We recommend that HUD pay particular attention to the adequacy of marketing plans for family properties in metropolitan neighborhoods with disproportionately few tenants from racial minority groups.

Fourth, HUD should include survey questions about how particular provisions of state Qualified Allocation Plans (QAPs) influenced property owners' decisions about site selection. This inquiry should include questions about the influence of requirements (or points) for local approval of projects, as well as other provisions of the local plan that may reinforce segregation.⁴

Fifth, when collecting information on the financial well-being of properties still in the LIHTC program, HUD should ask about properties' current capital needs. Understanding the capital needs of properties and whether they have sufficient reserves to cover them is important to predicting whether affordable units will be preserved after the expiration of use restrictions.⁵

Sixth, we encourage HUD to examine the levels of poverty concentration and racial segregation in the neighborhood areas for LIHTC properties that have not remained affordable housing after the fifteen year mark. Comparing poverty and race data between properties that remain affordable and those that don't could provide HUD with insight into how owners make decisions about the disposition of their properties, beyond just the immediate financial constraints. HUD should specifically examine whether state housing finance agencies have taken affirmative measures to prioritize preservation of LIHTC properties in high opportunity areas.

Program's difficult in reaching households with extremely low incomes).

³ Discrimination against Section 8 voucher holders in LIHTC properties is prohibited under 26 U.S.C. § 42(h)(6)(B)(iv).

⁴ See POVERTY & RACE RESEARCH ACTION COUNCIL AND LAWYER'S COMMITTEE FOR CIVIL RIGHTS UNDER LAW, BUILDING OPPORTUNITY: CIVIL RIGHTS BEST PRACTICES IN THE LOW INCOME HOUSING TAX CREDIT PROGRAM (2008), available at <http://www.prrac.org/pdf/2008-Best-Practices-final.pdf>.

⁵ See Khadduri & Wilkins, *supra* note 2, at 22 (discussing the lack of information about capital needs especially from early LIHTC properties).

Finally, we recommend that HUD increase the sample size for this survey. The small sample size proposed is unlikely to yield meaningful results on fair housing compliance and without greater diversity in locations and urban/suburban context it may not be fully representative of LIHTC properties and owners' decisions.

The proposed collection of information can be implemented with minimal burden on property owners who are surveyed, because almost all fair housing related data are already collected by owners, and owners should regularly maintain admissions and tenant selection criteria.

We appreciate the opportunity to comment on this proposal. Designing the survey with these elements in mind will ensure that HUD's goal of affirmatively furthering fair housing is advanced through this data collection effort.

Sincerely,



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